

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

VIVIAN G. SORIANO NETO, :

:

Petitioner, :

:

v. :

C.A. No. \_\_\_\_\_

:

JOHNNY CHOATE, in his official capacity as  
Warden, Aurora ICE Processing Center;  
ERNESTO SANTACRUZ, in his official capacity  
as Acting Field Office Director, U.S.  
Immigration and Customs Enforcement;  
PATRICIA HYDE, Director ICE Boston Field Office;  
KRISTI NOEM, U.S. Secretary of Homeland Security;  
in their official capacities.

Respondents :

**EMERGENCY PETITION  
FOR WRIT OF HABEAS CORPUS AD PROSEQUENDUM OR TESTIFICANDUM  
TO BE PRESENT IN THIS DISTRICT TO ASSIST IN THE PREPARATION OF HER  
DEFENSE, HAVE ACCESS TO HER ATTORNEYS, ATTEND PRE-  
ARRAIGNMENT AND ALL CRIMINAL PROCEEDINGS  
AND INCORPORATED MEMORANDUM OF LAW**

**INTRODUCTION**

1. Ms. Soriano Neto files this petition under 28 U.S.C. §2241(c)(5) to obtain a federal writ of habeas corpus *ad prosequendum* or *ad testificandum* so that she can be present for and assist with her defense in Superior Court in Providence County in the State of Rhode Island, for her criminal court appearance, currently scheduled for October 17, 2025 at 9:00 AM and thereafter all phases of her case including trial on pending

trafficking and indecent solicitation charges. Ms. Soriano Neto respectfully requests that this Court issue a writ of habeas corpus *ad prosequendum* or *ad testificandum* requiring that Ms. Soriano Neto be transported to the District of Rhode Island forthwith and be allowed to be released pursuant to the bail conditions the State of Rhode Island District Court has already set, namely \$35,000.00 with surety, and such other and further relief that appears meet and just in the circumstances.

2. As described below, Ms. Soriano Neto is an 18-year old Rhode Island resident and Honduran national who entered the United States with her family, at the age of 10, in 2017. While she was enrolled in high school, U.S. Immigration and Customs Enforcement (“ICE”) arrested Ms. Soriano Neto in March 2025 based on the pending Rhode Island criminal charges at issue here. In June 2025, ICE transported Ms. Soriano Neto to the Aurora Contract Detention Facility, a civil detention facility in Aurora, Colorado, where she is currently detained.
3. Ms. Soriano Neto wishes to attend her criminal proceedings in Providence, Rhode Island, to contest the trafficking and solicitation charges. This is important not only because she wants to exercise her constitutional right to be present at trial, but also because the pending charges pose an adverse impact on Ms. Soriano Neto's immigration proceedings and create a manifest injustice: she is detained because of charges she cannot contest due to that very detention. The pre-arraignment for her state criminal proceedings is scheduled for October 17, 2025, at 9:00 AM. See Declaration of John E. MacDonald (MacDonald Decl. ¶ 4.)
4. Importantly, the issuance of such a writ does not require the Court to find any underlying legal or constitutional violation. Rather, this Court has the authority under

28 U.S.C. §2241(c)(5) to issue such a writ purely to facilitate Ms. Soriano Neto's ability to prepare, defend and appear for criminal proceedings. The Court could issue the writ to ICE, which regularly transports civil immigration detainees between Colorado and other states.

#### FACTUAL AND PROCEDURAL BACKGROUND

5. Ms. Soriano Neto is an approved Special Immigrant Juvenile with strong ties to Rhode Island. *See* Declaration of Attorney Cindy Salazar Tohme (Salazar Decl.) ¶¶ 6, 7. Ms. Neto came to the United States in 2017 as a 10-year old minor from Honduras. *Id.* ¶ 5. Ms. Neto has an approved I-360 Special Immigrant Juvenile petition and is waiting for her priority date to become current to apply for lawful permanent residence. *Id.* ¶ 6.
6. Ms. Soriano Neto has applied for Asylum, having submitted her application on December 16, 2020. Her asylum hearing was initially scheduled for June 4, 2025 at Chelmsford Immigration Court located in 150 Apollo Drive Suite 100, Chelmsford, MA 01824. Salazar Decl. ¶ 6.
7. She has resided in Rhode Island since her arrival in 2010 and was enrolled in Providence Schools and attending high school in Providence, up until her ICE arrest and detention on March 11, 2025. *Id.* ¶ 7.
8. In February 2025, the State of Rhode Island charged Ms. Soriano Neto with Count 1 solicitation of a minor, in violation of RIGL 11-37-8.9 and Count 2 trafficking, in violation of RIGL 11-67-1.3, and Ms. Soriano was arraigned on February 21, 2025, and released on \$35,000 surety bail. MacDonald Decl. ¶¶ 2, 3.
9. Ms. Soriano Neto maintains her innocence and will be contesting this matter at pre-trial and/or trial in Providence Superior Court. MacDonald Decl. ¶ 5.

10. On March 11, 2025, ICE arrested Ms. Soriano Neto and initially detained her at Cumberland County Jail in Portland, Maine. Salazar Decl. ¶ 8.
11. But for the pending state charges, Ms. Neto would not have been detained by ICE. *Id.* ¶ 15. See also, Press Release, ICE, (May 27, 2025) (*available at <https://www.ice.gov/news/releases/ice-boston-arrests-illegal-honduran-national-charged-child-trafficking-crimes-rhode>*).
12. On April 3, 2025, the Immigration Judge entered an Order refusing to issue bond and mandating detention for the entirety of Ms. Soriano Neto's case. Salazar Decl. ¶ 9. Despite the fact that Ms. Soriano Neto had resided in the United States for eight years, the Immigration Judge deemed Ms. Soriano Neto an "arriving alien," making her ineligible for bond. *Id.* ¶ 9.
13. On June 1, 2025, three days before her scheduled asylum hearing, ICE transferred Ms. Soriano Neto over 2,000 miles away to Aurora, Colorado for alleged "reasons of bed space management." See Christopher Gavin, *Detained Providence teen was moved to Colorado days before asylum hearing because of 'bed space,' ICE says*, BOSTON GLOBE, June 19, 2025, <https://www.bostonglobe.com/2025/06/19/metro/ri-ice-detained-providence-teen-moved-maine-colorodo-asylum-hearing-bed-space/>.
14. Ms. Soriano-Neto is scheduled for court appearance at Rhode Island Superior Court on October 17, 2025. MacDonald Decl. ¶ 4. Ms. Soriano maintains her innocence, and her ability to appear at her court appearances and meet with her defense counsel in person is essential to her defense. *Id.* ¶ ¶ 5, 6.

15. If found not guilty or if charges are dismissed, Ms. Soriano Neto would be eligible to terminate removal proceedings for which she is currently being detained. Salazar Decl. ¶ 12.
16. Additionally, Ms. Soriano Neto's asylum hearing has now been moved to September 18, 2025, to be heard in Aurora, Colorado, where she is detained. Salazar Decl. ¶ 13.
17. The immigration court in Aurora, Colorado is in-person only, has no remote option for hearings, and thus requires her immigration attorney, who is representing Ms. Soriano Neto pro bono, to pay the expenses to fly to Colorado to prepare and present her case. Salazar Decl. ¶ 14. Ms. Neto's mother and sole guardian has returned to Honduras. *Id.*
18. Currently, because ICE has detained and transferred her 2,000 miles away, Ms. Soriano Neto is unable to appear for her criminal proceeding in Rhode Island Superior Court, causing severe prejudice in both her criminal and her immigration case. If Ms. Soriano Neto is unable to attend her own criminal trial, it would raise a variety of serious constitutional concerns, including under Due Process and Speedy Trial principles. The open criminal case is also negatively impacting Ms. Soriano Neto's immigration proceeding.
19. Consequently, it is imperative that Ms. Soriano Neto have an opportunity to appear for, and respond to, the charges against her in Providence Superior Court.
20. Ms. Soriano Neto seeks an order that she be returned to Rhode Island, and that ICE be restrained from transferring her to other facilities in the interim, without 48 hours prior notice to this Court.

#### ARGUMENT

**I. The Court has authority to issue a writ of habeas corpus to ensure Ms. Neto's transportation from ICE custody to her state court proceedings.**

Federal courts are empowered to issue writs of habeas corpus *ad prosequendum* or *ad testificandum* whenever "necessary to bring [a prisoner] into court to testify or for trial." 28 U.S.C. § 2241(c)(5); 28 U.S.C. § 1651. Failure to procure Ms. Neto's presence at her state criminal proceedings threatens serious constitutional violations and perpetuates a manifest injustice where she is detained because of charges she cannot contest due to that detention. The Court should issue such writ to preserve Ms. Neto's ability to respond to the state criminal charges against her.

Courts may issue writs of habeas corpus *ad prosequendum* or *ad testificandum* to compel a prisoner's appearance from civil immigration detention for their appearance in state court criminal proceedings. The *ad prosequendum* writ is "necessary as a tool for jurisdictional potency as well as administrative efficiency." *Carbo v. United States*, 364 U.S. 611, 618 (1961). The writ is especially vital for maintaining "is necessary between sovereignties in the administration of criminal justice in our federal-state system." *Id.* at 621.

Federal courts have jurisdiction to issue an *ad prosequendum* writ even where the prisoner's immediate custodian is located outside the judicial district. *Id.* at 615, 619-21. This authority also extends to the *ad testificandum* writ. *See Greene v. Prunty*, 938 F. Supp. 637, 638-39 (S.D. Cal. 1996); *see also United States v. Moussaoui*, 382 F.3d 453, 465-66 (4<sup>th</sup> Cir. 2004). Courts may exercise this authority to compel a prisoner's appearance from both state and federal facilities, including where the individual is held in immigration detention. *See Barnes v. Black*, 544 F.3d 807, 809 (7<sup>th</sup> Cir. 2008); *see also Figueroa v. McDonald*, 680 F. Supp. 3d 18 (D. Mass. 2018); *J.S.R. by and through J.S.G.*

*v. Sessions*, 330 F. Supp. 3d 731 (D. Conn. 2018). That the pending prosecution in state court is no barrier: the federal court’s jurisdiction is over the custodian — here, ICE — and the writ’s purpose is to ensure Ms. Neto’s presence “for trial” in the full constitutional sense, including the ability to prepare a defense.

Furthermore, comity between sovereigns supports the requested order. Under *Ponzi v. Fessenden*, 258 U.S. 254, 260–62 (1922), one sovereign may “loan” a prisoner to another to ensure justice is done, rooted in a “spirit of reciprocal comity.” Ordering ICE to return Ms. Neto to the state court’s jurisdiction for trial-related proceedings is consistent with that tradition, allowing Rhode Island to proceed without prejudice while preserving ICE’s ultimate custodial authority. The Supreme Court has long recognized that habeas corpus empowers courts to order conditional release from custody when continued detention is unnecessary or violates constitutional rights. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (habeas “at its core” allows courts to order release); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). That authority extends to setting conditions that preserve the custodian’s lawful interests while remedying an unlawful or excessive restraint. Ordering release here — in accordance with the state court’s \$35,000 with surety bail determination — is squarely within that remedial power.

**II. Ms. Soriano Neto’s circumstances warrant a federal court writ of habeas corpus *ad prosequendum* or *ad testificandum* to ensure her presence at her state court proceedings.**

A federal court writ is both appropriate and necessary here. Transportation from Colorado to Rhode Island will not interfere with Ms. Soriano Neto’s immigration proceedings. To the contrary, the opportunity to resolve these charges is essential to those immigration proceedings, as Ms. Soriano Neto may suffer the potentially devastating

immigration consequences of a pending felony charge and/or bench warrant if she is unable to appear in court on October 17, 2025.

Her immigration hearing was initially scheduled to be heard in Chelmsford Immigration Court, and it was only transferred to Colorado, after ICE had transferred Ms. Soriano Neto to Colorado. Salazar Decl. ¶¶ 6, 13. There is no reason why her asylum hearing cannot be rescheduled to be heard under the jurisdiction of the Boston or Chelmsford Immigration Court, which would also be of much help to her pro bono attorney. *Id.* ¶ 14.

Furthermore, the Rhode Island State Court has already found that Ms. Neto can be safely released pending trial. McDonald Decl. ¶ 3. This finding reflects the state court's evaluation of her flight risk and danger to the community — the same core considerations underlying federal bail determinations. Ignoring that determination effectively nullifies the judgment of a court of competent jurisdiction without a statutory mandate to do so.

### **III. Tailored Relief Preserves ICE's Interests While Avoiding Unnecessary Detention**

The requested relief would:

1. Direct ICE to return Ms. Neto to the prosecuting Rhode Island court's jurisdiction for the duration of trial-related proceedings, or to produce her on specified dates;
  2. Impose no undue burden, as prisoner transport is routine;
  3. Avoid permanent interference with ICE's authority, preserving ultimate custody;
- and
4. Harmonize with § 2241(c)(5), avoiding any conflict with statutory limits identified

in *Pennsylvania Bureau of Correction v. U.S. Marshals Serv.*, 474 U.S. 34 (1985), or *Shoop v. Twyford*, 596 U.S. 811 (2022).<sup>1</sup>

This Court can fashion the writ so that Ms. Soriano Neto is released to Rhode Island custody under state bail conditions for the pendency of her criminal case; ICE may immediately resume custody upon conclusion of the state proceedings or if other lawful grounds for detention arise; and ICE and the state coordinate to ensure compliance with all appearance requirements. Such conditions mirror the cooperative framework the Supreme Court endorsed in *Ponzi v. Fessenden*, 258 U.S. 254, 260–62 (1922) and maintains federal jurisdiction over immigration enforcement while preventing the unnecessary and prejudicial detention of a state defendant whom a state court has already granted bail.

### Conclusion

Whether viewed as a direct application of § 2241(c)(5) or as an exercise of ancillary power under the All Writs Act, this Court has clear authority to order ICE to return Ms. Neto to the state court’s jurisdiction. Without such an order, her Sixth Amendment rights, Rhode Island’s ability to conduct its prosecution, and the very purpose of the production-writ statutes will be irreparably compromised.

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<sup>1</sup> References:

- U.S. Marshals Service, “Writ of Habeas Corpus” (available at [www.usmarshals.gov/what-we-do/service-of-process/criminal-process/writ-of-habeas-corpus](http://www.usmarshals.gov/what-we-do/service-of-process/criminal-process/writ-of-habeas-corpus))
- U.S. Marshals Service, “Court Productions – Writs” (available at [www.usmarshals.gov/what-we-do/prisoners/operation/court-productions-writs](http://www.usmarshals.gov/what-we-do/prisoners/operation/court-productions-writs))
- U.S. Marshals Service, Policy Directive 9.13, “Writs of Habeas Corpus and Special Productions” (available at [www.usmarshals.gov/sites/default/files/media/document/usms-policy-directive-writs-of-habeas-corpus-and-special-production.pdf](http://www.usmarshals.gov/sites/default/files/media/document/usms-policy-directive-writs-of-habeas-corpus-and-special-production.pdf))
- Federal Bureau of Prisons, Program Statement 5875.13, “Transfer of Inmates to State Agents for Production on State Writs” (available at [federalcriminaldefenseattorney.com](http://federalcriminaldefenseattorney.com))
- Interstate Agreement on Detainers, 18 U.S.C. App. 2 (available at [www.govinfo.gov/content/pkg/USCODE-2015-title18/pdf/USCODE-2015-title18-app-interstat.pdf](http://www.govinfo.gov/content/pkg/USCODE-2015-title18/pdf/USCODE-2015-title18-app-interstat.pdf))

Additionally, as described above, the particular circumstances of this case demand issuance of the writ, namely:

1. Circular Injustice: Ms. Neto is detained because of criminal charges that she cannot contest because of that detention. This Kafkaesque situation demands judicial intervention.
2. Clear Prejudice: Ms. Neto's absence from her criminal proceedings violates due process, impairs her defense, and directly caused her immigration detention.
3. Approved SIJ Status: Ms. Neto has an approved I-360 petition and strong equities. Resolution of the criminal charges could allow her to terminate removal proceedings and pursue lawful permanent residence.
4. State Bail Determination: Rhode Island has already set appropriate bail conditions, demonstrating that the state does not view Ms. Neto as a flight risk or danger.
5. Resource Waste: Keeping Ms. Neto in Colorado when she needs to appear in Rhode Island wastes government resources and impedes justice.

For all the foregoing reasons, Ms. Neto respectfully requests that this Court issue a writ of habeas corpus *ad prosequendum* or *ad testificandum* requiring her transport to Rhode Island in time for her October 17, 2025 criminal preliminary hearing and all subsequent criminal proceedings, release pursuant to the Rhode Island District Court, grant of bail, pending resolution of her Rhode Island case and such other and further relief as this Honorable Court deems meet and just in the circumstances.

Date:

August 29, 2025

Respectfully submitted,

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